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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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10 GAREY LEE SMITH,

11 Petitioner,

12 v.

13 JOSIE GASTELO, Warden,

14 Respondent.
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Case No. EDCV 19-338-MWF (KK)

ORDER ACCEPTING FINAL
FINDINGS AND RECOMMENDATION
OF UNITED STATES MAGISTRATE
JUDGE

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17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for a Writ of
18 Habeas Corpus, the records on file, and the Final Report and Recommendation of the
19 United States Magistrate Judge. The Court has engaged in de novo review of those
20 portions of the original Report and Recommendation of the United States Magistrate
21 Judge to which Petitioner has objected. The Court accepts the final findings and
22 recommendation of the Magistrate Judge.

23 In his objections to the original Report and Recommendation of the United
24 States Magistrate Judge, Petitioner also requests an evidentiary hearing. However, in
25 habeas proceedings, “an evidentiary hearing is not required on issues that can be
26 resolved by reference to the state court record.” Totten v. Merkle, 137 F.3d 1172,
27 1176 (9th Cir. 1998); see also Earp v. Ornoski, 431 F.3d 1158, 1173 (9th Cir. 2005).
28 “It is axiomatic that when issues can be resolved with reference to the state court

1 record, an evidentiary hearing becomes nothing more than a futile exercise.” Totten,
2 137 F.3d at 1176. Here, the Magistrate Judge concluded all of Petitioner’s claims
3 could be resolved by reference to the state court record. Accordingly, the Court
4 denies Petitioner’s request for an evidentiary hearing.

5 IT IS THEREFORE ORDERED that Judgment be entered (1) denying the
6 Petition for a Writ of Habeas Corpus; and (2) dismissing this action with prejudice.

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8 Dated: March 16, 2020

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10 MICHAEL W. FITZGERALD
11 United States District Judge
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